

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re: Methyl Tertiary Butyl Ether ("MTBE")
Products Liability Litigation

**Master File No. 1:00-1898
MDL 1358 (SAS)**

This Document Relates To:

The Honorable Shira A. Scheindlin

*Commonwealth of Puerto Rico, et al. v. Shell
Oil Co., et al.*, Case No. 07 Civ. 1-470 (SAS)

**DECLARATION OF MICHAEL D. AXLINE IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
ON COUNTS I AND IV (STRICT PRODUCTS LIABILITY)**

I, Michael D. Axline, hereby declare:

1. I am counsel of record for plaintiff Commonwealth of Puerto Rico and the Commonwealth of Puerto Rico through the Environmental Quality Board (“EQB”) in this matter. I make this declaration based on my personal knowledge, and if called as a witness I could and would competently testify thereto.

2. Attached as Exhibit 1 are true and correct copies of excerpts of documents supporting Plaintiff’s **Opposition to Rule 56.1 Statement ¶ 20**: (a) 2/27/87 letter from George Dominguez to the Environmental Protection Agency enclosing MTBE Committee Statement on MTBE (Bates No. TX048892); (b) 11/03/98 E-mail correspondence from C. Stanley to JF Pedley (Bates No. EQ033388-89); (c) 9/24/97 E-mail Correspondence from C. Stanley to JC Dove, et al. (Bates No. EQ033658-59); (d) 4/19/85 Memorandum from B.J. Mickelson to J.Mixter (Bates No. EX EnFI00050); (e) 8/23/84 Memorandum from B.J. Mickelson to V.M. Dugan (Bates No. EX EnFI00048-49); (f) 10/27/00 Depo. of A. Jessel at 91 taken in *South Tahoe Pub. Utility v. Atlantic Richfield Company*, No. 999128 (Superior Ct. San Fran. County, CA) & Depo. Ex. 6 (Bates No. CH1AJ001521, 23); (g) 8/12/91 Memorandum from J.L. Koerber to Regional Managers (Bates No. CHEV 09564); (h) 10/17/97 Letter from D. Bordvick to J. Dunlop; and (i) “Statement of Tosco Corporation Before the Assembly Committee on Natural Resources” (11/21/97) (Santa Monica, CA).

3. Attached as Exhibit 2 are true and correct copies of excerpts of reports and deposition transcripts of **Bruce Burke** and **Marcel Moreau**: (a) Expert Report of Bruce F. Burke dated January 22, 2014; (b) Expert Generic Report of Marcel Moreau (Dec. 6, 2013); (c) Expert Rebuttal Report of Marcel Moreau (Feb. 28, 2014); (d) 5/14/14 deposition transcript of M. Moreau; and (e) 5/15/14 Deposition Trans. of M. Moreau.

4. Attached as Exhibit 3 are true and correct copies of excerpts of reports and deposition transcripts of **Graham Fogg, Anthony Brown and Kenneth Rudo**: (a) Expert Report of Graham E. Fogg, Ph.D. (Jan. 15, 2014); (b) 5/27/14 Deposition Trans. of Graham Fogg; (c) Revised Expert Report of Anthony Brown (April, 2014); (d) 5/23/14 Deposition Trans. of Anthony Brown; and (e) Expert Report of Kenneth Rudo (Dec. 6, 2013.)

5. Attached as Exhibit 4 are true and correct copies of excerpts of reports and deposition transcripts of **John O'Brien, Thomas C. Austin and C. David Millican**: (a) 5/30/14 Deposition Trans. of John O'Brien; (b) Expert Report of John O'Brien (4/07/14); (c) 4/29/14 Deposition Trans. of Thomas C. Austin; and (d) Second Amended Expert Report of C. David Millican (5/16/14).

6. Attached as Exhibit 5 are true and correct copies of excerpts of deposition transcripts: (a) 10/22/14 Deposition Trans. of **Edward Maciula**; (b) 5/20/14 Deposition Trans. of **Mark D. Scharre**;¹ (c) 10/02/13 Deposition Trans. of **Freddy Flores**; (d) 11/12/13 Deposition Trans. of **Juan Lopez**; and (e) 9/25/13 Deposition Trans. of **Juan Perez**.

7. Attached as Exhibit 6 are true and correct copies of excerpts of documents and deposition transcripts: (a) 12/24/01 E-mail Correspondence from John Bullock to D. Beer, et al. &

¹ This exhibit and the following exhibits are being lodged separately and filed under seal due to the confidentiality order in this matter:

Ex. 5 (b) 5/20/14 Deposition Trans. of Mark D. Scharre.

Ex. 5 (d) 11/12/13 Deposition Trans. of Juan Lopez.

Ex. 6 (b) Deposition Ex. 9 (Exxon Caribbean Sales Commercial Action Summary and "Proposed Term 1994 Mogas Supply for Puerto Rico").

Ex. 6 (c) 11/13/13 Deposition Trans. of Patrick Bloomer.

Ex. 7 (b) 6/17/14 Deposition Trans. of Victor Dugan.

Ex. 7 (d) 6/09/14 Deposition Trans. of Thomas Eizember.

“MTBE Policy Review-December 2001”; (b) 5/06/14 Deposition Trans. of **Ricardo L. Casas-Lomba** and Deposition Ex. 9 (Exxon Caribbean Sales Commercial Action Summary and “Proposed Term 1994 Mogas Supply for Puerto Rico”); and (c) 11/13/13 Deposition Trans. of **Patrick Bloomer**.

8. Attached as Exhibit 7 are true and correct copies of excerpts of documents and deposition transcripts of: (a) Designation and Disclosure of **Victor Dugan** (Former Employees of Exxon Mobil Corporation) (April 4, 2014); (b) 6/17/14 Deposition Trans. of Victor Dugan; (c) Designation and Disclosure of **Thomas Eizember** (Former Employees of Exxon Mobil Corporation) (April 6, 2014); (d) 6/09/14 Deposition Trans. of Thomas Eizember; and (e) the 5/28/14 Deposition Trans. of Kenneth Stern.

9. Attached as Exhibit 8 are true and correct copies of excerpts of documents relating to the **Commonwealth of Puerto Rico chamber of Representatives Report Chamber Resolution 7008**: (a) Report: Chamber Resolution 7008 (Nov. 29, 2000); (b) 8/15/00 Letter from Juan Vasquez to Honorable Antonio Silva, President, Socioeconomic Development and Planning Commission, Chamber of Representatives of Puerto Rico; (c) 8/15/00 Letter from Eric Guzman, Marketing Manager, Caribbean Petroleum Limited Partnership to Honorable Antonio Silva, President, Socioeconomic Development and Planning Commission, Chamber of Representatives of Puerto Rico; and (d) 9/20/00 Letter from Jorge Concha, President, Esso Standard Oil Co. (Puerto Rico) to Hon. Antonio Silva.

10. Attached as Exhibit 9 are true and correct copies of excerpts of documents and deposition transcripts: (a) 1/13/00 Deposition Trans. of **Barbara Mickelson** taken in *South Tahoe*

Pub. Utility v. Atlantic Richfield Company, No. 999128 (Superior Ct. San Fran. County, CA); (b) 4/26/00 Deposition Trans. of **Dale Young** taken in *South Tahoe Pub. Utility v. Atlantic Richfield Company*, No. 999128 (Superior Ct. San Fran. County, CA); (c) 6/05/00 Deposition Trans. of **David Bott** taken in *South Tahoe Pub. Utility v. Atlantic Richfield Company*, No. 999128 (Superior Ct. San Fran. County, CA); (d) 5/29/98 E-mail Correspondence from G. Marshall to C. Stanley; and (e) 3/12/99 E-mail Correspondence from G. Marshall to C. Stanley.

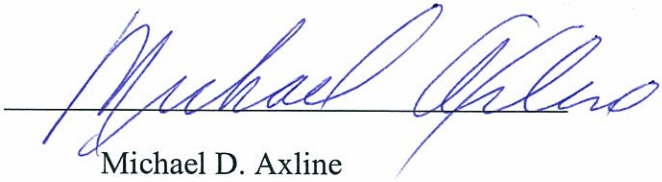
11. Attached as Exhibit 10 are true and correct copies of excerpts of the jury verdicts in the following cases: (a) *South Tahoe Pub. Utility v. Atlantic Richfield Company*, No. 999128 (Superior Ct. San Fran. County, CA) (Special Verdict Form Phase I); (b) *id.*, *City of Merced v. Chevron U.S.A.*, No. 148451 (County of Merced, CA)(Special Verdict Form); (c) *id.*, *State of New Hampshire v. Hess Corp.*, No. 03-C-0550 (Merrimack Superior Ct., N.H.) (Special Verdict Form); and (d) *id.*, *City of New York v. ExxonMobil Corp.*, No. 04 Civ. 3417 (S.D.N.Y.) (Interrogatory Sheet Phase III).

12. Attached as Exhibit 11 are true and correct copies of excerpts from the following proceedings: (a) *In Re MTBE*, No. 1:00-1989, 7/15/14 Hearing Trans. (R.T.); (b) *City of Merced v. Chevron U.S.A.*, No. 1484 51 (County of Merced, CA) Ruling on Defendants' Motions for Nonsuit; and (c) *City of Merced v. Chevron U.S.A.*, No. 1484 51 (County of Merced, CA) Oct. 4, 2011 R.T.

13. Attached as Exhibit 12 are true and correct copies of excerpts of documents and deposition transcripts: (a) Deposition Trans. of Wayne Wilson taken in *In re MTBE* (Dec. 7, 2006); (b) Deposition Trans. of Kenneth Anderson taken in *In re MTBE* (June 20, 2007); and (c) Deposition Trans. of Michael Roman taken in *In re MTBE* (March 28, 2007).

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed this 7TH day of November, 2014, at Sacramento, California.



Michael D. Axline

PROOF OF SERVICE VIA LEXISNEXIS FILE & SERVE

Commonwealth of Puerto Rico, et al. v. Shell Oil Co., et al., United States District Court,
Southern District of New York Case No. No. 07 Civ. 10470 (SAS)

I, the undersigned, declare that I am, and was at the time of service of the paper(s) herein
referred to, over the age of 18 years and not a party to this action. My business address is 1050
Fulton Avenue, Suite 100, Sacramento, CA 95825-4225.

On the date below, I served the following document on all counsel in this action
electronically through LexisNexis File & Serve:

**DECLARATION OF MICHAEL D. AXLINE IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
ON COUNTS I AND IV (STRICT PRODUCTS LIABILITY)**

I declare under penalty of perjury under the laws of the United States of America and the
State of California that the foregoing is true and correct.

Executed on November 7, 2014, at Sacramento, California.


KATHY HERRON